

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case Nos. 1:00-CR-51
and 1:01-CR-34

v.

HON. ROBERT HOLMES BELL

NOEL CANO,

Defendant.

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MEMORANDUM OPINION AND ORDER

Defendant Noel Cano has filed a motion for modification or reduction of sentence (ECF No. 162 in Case No. 1:00-CR-51) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission. The Court notes that there are two cases involved with this Defendant, as indicated in the heading. Defendant Cano filed a motion for reduction of sentence in Case No. 1:00-CR-51, however, the Sentence Modification Report calculation applies to both matters as they are grouped together by operation of USSG § 3D1.2(d).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendment 782 of the United States Sentencing Guidelines reduced by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties in U.S.S.G. §§ 2D1.1 and 2D1.11. These modifications were made retroactive effective November 1, 2014. U.S.S.G. § 1B1.10.

The Probation Department filed a sentence modification report on November 9, 2015 (ECF No. 178). In its report, the probation department recommended the defendant is eligible for reduction in sentence based on defendant currently being an inmate, USSG § 2D1.1 was used in the guideline calculations, and the guideline range applicable to the defendant subsequently has been lowered as a result of the retroactive amendment to the Sentencing Guidelines (782). It recommended a reduction to 96 months in Case No. 1:01-CR-34, but did not recommend a reduction in Case No. 1:00-CR-51, due to a mandatory minimum sentence of 120 months.

Counsel for the government and defendant filed a stipulation (ECF No. 186) on December 18, 2015, concurring with the sentence modification report, except regarding the mandatory minimum sentence of 120 months. The parties agree that at the time of sentencing in Case No. 1:00-CR-51, the district court granted a 2-level downward departure pursuant to the government's USSG 5K1.1 motion based upon substantial assistance. It was noted at sentencing that the government expressly authorized the release of the statutory mandatory minimum sentence (ECF No. 145 at Page Nos. 7-8, in Case No. 1:00-CR-51).

NOW THEREFORE, the Court finds a reduction of sentence is consistent with the policy statements of the U.S. Sentencing Commission.

IT IS FURTHER ORDERED that Defendant's motion for modification of sentence (ECF No. 162) pursuant to 18 U.S.C. § 3582(c)(2) is **GRANTED**. Defendant Noel Cano's sentence shall be reduced to **96 months in both cases, to run concurrently**. An order effectuating the sentence reduction shall issue forthwith.

Dated: December 22, 2015

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE